

**First Union Commercial Corporation**  
One First Union Center  
Charlotte, North Carolina 28288-0739  
704 374-4900

0100140019

**FIRST  
UNION**

March 8, 1994

RECORDATION NO. 18729 FILED 1425

MAR 11 1994 - 11:20 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED  
OFFICE OF THE  
SECRETARY  
MAR 11 11 20 AM '94  
LICENSING BRANCH

Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Room 2303  
Washington, DC 20423

**Re: Recordation of Documents Relating to Lease of 10 Railcars**

Dear Sir or Madam:

On behalf of First Union Commercial Corporation and filed pursuant to the requirements set forth in Part 1177 of Title 49 of the Code of Federal Regulations are two (2) originals of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

A short summary of the documents in accordance with Section 1177.3(d)(8) of Title 49 is as follows:

Master Net Lease Agreement between Burlington Northern Railroad Company, as Lessee, and First Union Commercial Corporation, as Lessor, dated as of March 1, 1994, relating to the lease ten (10) all-purpose Husky-Stack single unit double stack container/trailer cars with 70-ton trucks numbered BN61000 through BN61009.

The names and addresses of the parties to the transaction shown above are as follows:

Burlington Northern Railroad Company  
3800 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102

First Union Commercial Corporation  
One First Union Center  
Charlotte, North Carolina 28288-0738

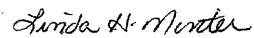
*Mr. Butler*  
*Conrad*

Interstate Commerce Commission  
March 8, 1994  
Page 4

The fee for recording these documents will be supplied by the Washington Service Bureau. The original set of documents along with the receipt for recording and any extra copies not required by your office should be given to the individual from the Washington Service Bureau, who has been selected by First Union to present this filing to your office.

Sincerely,

FIRST UNION COMMERCIAL CORPORATION

A handwritten signature in cursive script, appearing to read "Linda H. Minter".

Linda H. Minter  
Assistant Vice President

Enclosures

1p/0915J

**Interstate Commerce Commission**  
Washington, D.C. 20423

3/11/94

OFFICE OF THE SECRETARY

Linda H. Minter  
First Union Commercial Corp.  
One First Union Center  
Charlotte, N.C. 28288-0739

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 3/11/94 at 11:25am , and assigned  
recordation number(s). 18729

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

18729  
RECORDATION NO. \_\_\_\_\_ FILED 1425  
MAR 11 1994 - 11:25 AM  
INTERSTATE COMMERCE COMMISSION

## **MASTER NET LEASE AGREEMENT**

This Master Net Lease Agreement dated as of the 1st day of March, 1994 ("Agreement") between **FIRST UNION COMMERCIAL CORPORATION**, a North Carolina corporation, with its principal office at 301 South College Street, Charlotte, North Carolina 28202 (hereinafter called "Lessor"), **BURLINGTON NORTHERN RAILROAD COMPANY**, a Delaware corporation, with its principal office at 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102 (hereinafter called "Lessee"), and **BN LEASING CORPORATION**, a Delaware corporation, with its principal office at 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102 (hereinafter called "BNLC"), **WITNESSETH THAT:**

In consideration of the mutual terms and conditions hereinafter set forth, Lessor, Lessee, and BNLC hereto agree as follows:

### **ARTICLE 1: LEASE**

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment shown on each Rider hereto and such additional Riders as may be added from time to time by agreement of the parties (all such equipment being hereinafter individually referred to as a "Unit" and collectively referred to as the "Units"). Each Rider shall set forth a description of the Units covered thereby, including such facts as the number of Units of each type, the Association of American Railroads ("AAR") or United States Department of Transportation ("DOT") specifications, rental charges, term throughout which the Unit or Units shall remain in Lessee's service, any renewal or purchase options, the delivery location and such other information as may be desired by both parties, including any variation from the terms of this Agreement. In the event of any conflict between this Agreement and any Rider, the Rider shall control with respect to the Units subject to such Rider. It is the intent of all parties to this Agreement that this Agreement be a true lease.

### **ARTICLE 2: TERM**

The term of this Agreement with respect to each Unit shall commence on the date of delivery to and acceptance of such Unit by Lessee as set forth in the applicable Rider attached hereto and shall terminate, unless otherwise terminated by any other provision hereof, on the date specified in such Rider (hereinafter referred to as the "Lease Term").

### **ARTICLE 3: DELIVERY AND ACCEPTANCE**

Lessor will, at its expense, notify and deliver the Units to the Lessee at the interchange point(s) on Lessee's lines as specified in the applicable Rider. Upon delivery, Lessee will have the right to inspect each Unit. Lessee retains the right to reject any Unit and will notify Lessor, in writing, within ten (10) business days after delivery, of Lessee's rejection of the Unit and the specific reason for such rejection. Failure to notify Lessor as to the rejection of a Unit or the use of any Unit by Lessee or at its direction will constitute acceptance of the Unit by Lessee. Upon delivery and acceptance of all of the Units set forth in a Rider, if Lessor so desires and so notifies Lessee, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit A.

#### **ARTICLE 4: MARKINGS**

At the time of delivery of the Units by Lessor to Lessee, Lessor will, at Lessee's expense, have the Units plainly marked according to AAR Interchange Rules with the identification marks of Lessee. If such markings (or any of the markings required pursuant to Article 18 B) shall at any time be removed or become illegible, wholly or in part, Lessee shall, as soon as practical, cause such markings to be restored or replaced, at its expense. Lessee shall not otherwise place, or permit to be placed, any lettering or marking of any kind upon the Units without Lessor's prior written consent, which shall not be unreasonably withheld. In no event shall Lessee place or permit to be placed any marking or lettering on the Units which may reasonably be interpreted as a designation of ownership.

#### **ARTICLE 5: PAYMENT OF RENTALS**

A. Subject to the satisfaction of the ongoing conditions in Article 8 hereof, Lessee agrees to pay Lessor the rent specified in the Rider for each Unit. The rent for each Unit shall be paid in monthly installments, payable in arrears, commencing one month following delivery of all of the Units. The first payment for any Unit shall be equal to the prorated amount for the time from delivery and acceptance of the Unit until the first payment date for such Unit. If any of the rent payment dates falls on a Saturday, Sunday or legal holiday, the rent shall be due on the next succeeding business day. In the event Lessor notifies Lessee in writing that the right to receive rents has been assigned in accordance with Article 18 hereof, Lessee shall make payment in the manner designated in such notice or as otherwise designated in writing by such assignee.

B. Lessee will, on demand, pay to Lessor interest at the prime rate, as published in the Wall Street Journal, plus 2% (or the maximum rate permitted by applicable law, whichever is less) on any payment not paid within thirty (30) days of due date for any period during which such payment is overdue.

C. This Agreement is a net lease and Lessee's obligation to pay rent and other amounts payable hereunder shall be absolute and unconditional and, except as herein specifically provided in Articles 5A, 8, 10 and 12, Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any existing or future claims of the Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this lease terminate, or the respective obligations of Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Units from whatsoever cause, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement.

#### **ARTICLE 6: CAR HIRE REVENUE**

Lessee shall be entitled to all mileage, per diem and off-line revenue (collectively the "Car Hire Revenue") earned by the Units during the Lease Term. Any Car Hire Revenue collected or received by Lessor shall be credited against Lessee's next rental payment obligation under this Agreement.

#### **ARTICLE 7: TITLE**

Lessee acknowledges and agrees that by the execution of this Agreement it does not obtain, and by payments and performance hereunder it does not, and will not, have or obtain any title to the Units or any property right or interest therein, legal or equitable, except solely as Lessee hereunder and subject to all of the terms hereof.

#### **ARTICLE 8: LOCATION, POSSESSION AND USE**

Lessee may operate the Units throughout the United States, Canada, and Mexico. So long as Lessee is not in default under this Agreement, neither Lessor nor any agent of Lessor or any person claiming any interest in the Units through Lessor, or Lessor's successors or assigns, including without limitation, any person with whom Lessor or Lessor's successors or assigns has financed the Units, will disturb Lessee's possession, use and quiet enjoyment of the Units. Lessee will operate the Units in the manner customarily used in the railroad business.

#### **ARTICLE 9: MAINTENANCE AND REPAIR**

Lessee will be responsible for the cost and expense of maintaining the Units in good condition and repair, ordinary wear and tear excepted, according to the AAR Interchange Rules. Any parts installed or replacements made by Lessee upon any Unit shall be considered accessions to such Unit and title thereto shall be immediately vested in Lessor.

#### **ARTICLE 10: MODIFICATIONS**

In the event the AAR, DOT or any other governmental agency having jurisdiction over the operation, safety or use of railroad equipment requires that the Units be added to, modified, or in any manner adjusted (hereinafter referred to as "Modifications") in order to qualify them for operation in railroad interchange prior to the expiration of the Lease Term, Lessor will cause such Modifications to be made at its own expense; provided, however, that if the cost of such required Modification exceeds one thousand dollars (\$1,000) per Unit or is mutually agreed upon by Lessor and Lessee to be uneconomical in view of the estimated remaining useful life of the Unit, Lessor shall have the option to terminate this Agreement as to such Unit in lieu of making such Modifications. Lessor shall notify Lessee at least sixty (60) days prior to the effective date of such Modification that Lessor elects to terminate this Agreement as to such Unit. Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such Modification in any reasonable manner which does not adversely materially affect the rights or interests of Lessor in the Units or hereunder. Rent for any Unit moved to a shop for Modifications under this Article 10 will abate five (5) days after the date the Unit is switched into the property of such shop or interchanged with a connecting line carrier, whichever is earlier. Rent for a modified Unit will be reinstated as of the date such Unit is returned to the Lessee's lines for service. Lessee agrees to pay an additional monthly charge of \$0.84 per Unit for each \$100 expended by Lessor on such Unit for Modifications required under this Article. Except for Modifications required by law, Lessee shall not, without the prior written consent of Lessor, effect any change in the design, construction or body of the Units. Lessor's consent to modifications or additions to the Units which do not impair the value or utility of the Units shall not be unreasonably withheld, as long as such modifications or additions

which are not readily removable without material damage to or diminution of the Units are considered accessions to the Units.

#### **ARTICLE 11: COMPLIANCE WITH REGULATIONS**

Lessee shall, at its own expense, comply with all governmental laws, regulations and requirements, and with the AAR Interchange Rules with respect to the use and operation of the Units. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Units and shall bear all risk of failure to obtain such permissions, approvals and consents, or of cancellation thereof. Lessor shall take all actions, at Lessee's expense (excluding Lessor's internal costs), reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals or consents.

#### **ARTICLE 12: CASUALTY**

A. In the event that any Unit shall be or become lost, stolen, or in Lessee's good faith opinion, worn out, contaminated or destroyed (any such occurrence or determination being hereinafter called a "Casualty"), the Lessee shall, within thirty (30) days after it has knowledge of such Casualty, notify Lessor in regard thereto.

B. Following the occurrence of a Casualty with respect to any Unit, the Lessee shall, on the first rental payment date after its notice of a Casualty with respect to such Unit, pay to Lessor the casualty value for such rental payment date as set forth in the casualty schedule of the applicable Rider (hereinafter called a "Casualty Payment") plus any other sums due on or prior to such date in respect of such Unit then remaining unpaid. If no casualty schedule is contained in the applicable Rider, the Lessee shall pay to the Lessor the amount prescribed by the AAR Interchange Rules for the loss or destruction of such Unit.

C. Upon payment of all sums required to be paid pursuant to Article 12 B hereof in respect of any Unit, the obligation to pay rent for such Unit accruing subsequent to the Casualty Payment date will terminate and the Unit will be deleted from this Agreement but the Lessee shall continue to pay rent for all other Units.

D. Upon payment of the applicable amounts following a Casualty, title to the Unit which has suffered such Casualty shall immediately vest in Lessee and Lessor will take such steps as necessary to transfer such title to Lessee.

#### **ARTICLE 13: SUBSTITUTION**

If the Modifications required by any Unit are determined by Lessor to be uneconomical to perform as provided in Article 10, or if any Unit is determined by Lessor to have been destroyed, Lessor has the option, within a period of time not to exceed ninety (90) days, to substitute, subject to Lessee's right of acceptance under Article 3 herein, another Unit of approximately the same age, type and capacity under this Agreement. Rental for such substituted Unit will commence as of the date such Unit is delivered to Lessee's lines for service.

#### **ARTICLE 14: PROHIBITION OF LIENS**

Lessee, at its own expense, will promptly pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Lessee or its successors or assigns which, if unpaid, might become a lien upon any

Unit, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner.

#### ARTICLE 15: TAXES

Lessee agrees to assume responsibility for the payment of all applicable taxes, levies, assessments, and other governmental charges or withholdings of any nature levied or assessed by any federal or state governmental taxing authority upon or with respect to the Units, or the use of the Units under the terms hereof, and which are payable solely and directly on account of the leasing of the Units by Lessee, including, but not limited to, any ad valorem taxes, license or registration fees, and sales taxes, provided, however, that Lessee shall not be responsible for (i) any tax on, based on, measured by, or with respect to net or gross income, capital, franchises, excess profits or conduct of business of Lessor, and (ii) any sales, use or other taxes or charges levied or assessed in connection with Lessor's acquisition (whether such acquisition is by sale or lease), use, consumption, manufacture, disposition, delivery or storage of the Units. Lessee will be under no obligation to pay any such taxes or other charges so long as Lessee in good faith and by appropriate legal or administrative proceedings contests the validity or amount thereof or directs Lessor to contest the validity or amount thereof, which contest Lessor so agrees to undertake at Lessee's cost, and the nonpayment thereof does not adversely affect the title, property or rights of Lessor in or to any Unit. Lessee will not be responsible for any such amounts, and any interest or penalties thereon, if they are imposed as a result, directly or indirectly, of Lessor's act or failure to act or misrepresentation or omission. Lessor shall indemnify Lessee and hold Lessee harmless from any and all taxes and other charges for which Lessee has not agreed to assume responsibility for hereunder, including reasonable attorney's fees incurred in connection with defending against the assertion or imposition of such taxes or other charges.

In order to avoid the loss or recapture of any deduction allowable under Section 168 of the Internal Revenue Code of 1986, as amended (the "Code") (hereafter "Tax Benefits"), Lessee represents that during the Lease Term as regards any Unit, the use of the Unit will not cause the Unit either to constitute "tax exempt use-property" within the meaning of Section 168(h) of the Code or to be deemed to be used "predominantly outside the United States" within the meaning of Section 168(g)(4) of the Code.

If Lessor (or any owner of any interest of Lessor) shall lose by disallowance, recapture or otherwise, any portion of the Tax Benefits (a "Loss") as a direct and primary result of (x) Lessee's breach of its representations set forth in the immediately preceding paragraph, (y) any act of Lessee (other than an act required or permitted under this Agreement), or (z) any failure by Lessee to take any action required under this Agreement, Lessee agrees to pay Lessor or such owner, as the case may be, a sum which, (i) taking into account the income tax consequences to Lessor or such owner, as the case may be, of the receipt of such payment and (ii) taking into account the present value of the tax benefits, if any, accruing to Lessor or such owner, as the case may be, from such Loss, under the Code and under the laws of any state, shall equal the amount of such federal and state income taxes as Lessor, or such owner, as the case may be, is required to pay as a result of such Loss, computed using the applicable actual federal and state marginal income tax rates in effect at the applicable time, together with any interest and penalties thereon. Notwithstanding any provision hereof to the contrary, Lessee shall not have any liability to Lessor with respect to any Loss resulting from any event otherwise



requiring such indemnification (a "Lessee Event") to the extent such Loss would not have occurred but for one or more of the following events (a "Lessor Event") (or to the extent such Loss also results from a Lessor Event and would have occurred had such Lessor Event arisen in the absence of such Lessee Event, if such Lessor Event arose prior in time to such Lessee Event): (a) a sale, assignment, transfer or other disposition, whether voluntary or involuntary, of any interest in the Unit or any part thereof, other than a disposition attributable to the exercise of default remedies under this Agreement; (b) events which require Lessee to pay an amount equal to or in excess of the Casualty Payment; (c) a failure by Lessor timely or properly to claim accelerated depreciation deductions on its tax returns or Lessor voluntarily taking a return position for federal income tax purposes without Lessee's consent that would result in an indemnity (unless independent tax counsel selected by Lessor and reasonably acceptable to Lessee renders a written opinion to Lessor and Lessee that no reasonable basis exists for making such claim or for not taking such return position, which written opinion shall have been delivered to Lessee not less than 30 days prior to the filing of the income tax return reflecting such failure or position); (d) the application of Section 55, 56, 57, 58, 168(d)(3) (except to the extent applicable as a direct and primary result of a modification), 168(f)(5) (except to the extent applicable as a direct and primary result of the inaccuracy of the tax representations set forth in this Article 15 or a modification), 291, 465, 467 or 469 of the Code or any successor provisions or any Treasury Regulations thereunder; (e) the failure of Lessor to have sufficient taxable income against which to benefit from the accelerated depreciation deductions; (f) the failure of this Agreement to be treated as a "true lease," or the failure of Lessor to be treated as the owner of the Units, for federal income tax purposes other than as a direct and primary result of the inaccuracy of any of Lessee's tax representations; (g) any amendment to or change in the Code or other federal or state tax statute or regulations thereunder (or official interpretation of any of the foregoing) (but, in the case of any such amendment to or change in such a regulation or official interpretation, only to the extent such amendment to or change represents a change rather than a clarification of the meaning of the tax law as existing on the date of this Agreement) occurring or effective after the date of this Agreement; (h) the inclusion in income of Lessor upon termination of the Lease Term of amounts attributable to modifications, improvements, alterations of or to the Unit. Such sum shall be payable by Lessee on written demand after payment of the Taxes attributable to the Loss (such demand shall contain a computation reflecting the amount of such Loss); provided, however, that such payment shall not be required for so long as Lessor or such owner, as the case may be, is contesting the validity or amount of such Loss by legal or administrative proceedings and provided such payment is not required by applicable law; and provided further that Lessee shall be under no obligation to indemnify Lessor or such owner, as the case may be, for the amount of any Loss with respect to any Unit for which Lessor has received payment under Article 12B hereof. Lessor or such owner, as the case may be, agrees to diligently contest any proposed Loss in good faith provided that Lessee (a) within thirty (30) days after written notice by Lessor to Lessee of such proposed Loss shall request that such proposed Loss be contested (such notice by Lessor being a further condition to Lessee's obligation to indemnify Lessor or such owner, as the case may be, for such proposed Loss), (b) prior to contesting such proposed Loss, Lessee shall, at its sole expense, have furnished to Lessor with a written opinion of independent tax counsel selected by Lessee to the effect that there is a reasonable basis for contesting such proposed Loss, and (c) Lessee promptly pays all costs and expenses incurred by Lessor in connection with such contest; provided, however that Lessor shall not be required to contest any Loss unless such Loss at least equals \$10,000. Lessor agrees that if there is a refund of amounts as to which Lessee has paid an indemnity pursuant to this paragraph, Lessor

shall pay to Lessee an amount equal to the amount of such refund together with any interest thereon received by or credited to Lessor or such owner, as the case may be.

#### **ARTICLE 16: INSURANCE**

Lessee will, during the Lease Term, at its own expense, carry and maintain (i) property insurance in respect of the Units and (ii) public liability insurance with respect to third party personal injury and property damage, against such risks and in such amounts, if any, as customarily insured against by Lessee in respect to similar equipment owned or leased by it. Lessee, at its sole option, may elect to satisfy all or a part of the above insurance requirements through a self-insurance program.

#### **ARTICLE 17: INDEMNITIES**

A. Lessee agrees to indemnify and hold Lessor harmless from any loss, damage, liability, claim and expense, including reasonable attorney fees, arising out of the use or operation of the Units during the term of this Agreement and until such time as the Units are returned to Lessor pursuant to Article 19, excepting, however, any loss, damage, liability, claim or expense which is attributable to the gross negligence or willful misconduct of Lessor, its agents or employees.

B. Lessor shall not be liable for any loss or damage to any commodities loaded or shipped in the Units. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage.

#### **ARTICLE 18: ASSIGNMENT; SUBLEASE; SUBORDINATION**

A. So long as Lessee shall not be in default under this Agreement, Lessee may sublease the Units to others; provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all of the terms of this Agreement. In addition, before Lessee enters into any such sublease, Lessee must obtain Lessor's prior written approval, and Lessor agrees that such approval shall not be unreasonably withheld and that such determination is to be given within five (5) business days of the date of such request. No sublease of any Unit shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder including, but not limited to, the payments due to Lessor pursuant to Article 5 of this Agreement.

B. This Agreement and the applicable Rider(s) shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. It is understood and agreed that Lessor or any Lease Assignee may assign this Agreement with respect to some or all of the Units to any security trustee, secured party or owner of such Units (each herein a "Lease Assignee"). Upon delivery of a written notice of assignment to Lessee, Lessor as used herein shall mean such Lease Assignee. Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Agreement by Lessor or any Lease Assignee; provided, however, that any such consent and/or acknowledgement shall not in any manner increase or change the rights, obligations, duties or legal position of the Lessee. Lessor warrants that any Lease Assignee shall agree to all the terms and conditions of this Agreement. Each Lease Assignee shall warrant that any subsequent Lease Assignee shall agree to all terms and conditions of this Agreement.

C. Upon notice to Lessee from any security trustee, secured party or owner that an event of default has occurred under such lease or financing agreement, such party may require that all rent shall be paid directly to such party and/or that the Units be returned to such party, but only upon completion or termination of this Agreement, including any optional renewal term pursuant to Article 24 hereof. Any assignment of this Agreement by Lessor or any Lease Assignee to any security trustee or secured party shall not subject that security trustee or secured party to any of Lessor's or such Lease Assignee's obligations hereunder.

#### **ARTICLE 19: RETURN OF UNITS**

A. Upon the expiration or earlier termination of this Agreement with respect to any Unit, including any optional renewal term pursuant to Article 24 hereof, Lessee will, at its own cost and expense, deliver possession of such Unit to Lessor at any interchange or loading point on the tracks of Lessee, f.o.b. such interchange or loading point, as Lessor may reasonably designate to Lessee in writing at least sixty (60) days before the end of the Lease Term, or in the absence of such designation, as Lessee may select, or, if Lessor has requested storage pursuant to Article 19 B, to the location determined in accordance with Article 19 B. Each Unit when returned to Lessor pursuant to this Article 19 A shall be free from excessive accumulations or deposits from the commodities transported in or on the Unit during the Lease Term. Upon expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and tender of such Unit at the location determined in accordance with this Article 19 A, this Agreement and the obligation to pay rent for such Unit accruing subsequent to the expiration of the Lease Term with respect to such Unit shall terminate.

In the event any Unit is not returned as hereinabove provided as a result of any action or inaction on the part of Lessee, Lessee shall pay to Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of Lessee to return such Unit to Lessor at the expiration of the Lease Term as required by the provisions of this Article 19 A, an amount equal to the daily equivalent of the arithmetic average of the rent during the Lease Term for such Unit or, if the failure to return occurs after a renewal term, the arithmetic average of the rent paid during the renewal term for such Unit. The provision for such payment shall not be in abrogation of Lessor's right under this Article 19 A to have such Unit returned to it hereunder, and in any event, failure of Lessee to return the Units within 90 days will constitute an Event of Default, whereupon the provisions of Article 23B shall apply to such unreturned Units.

B. Upon the expiration of the Lease Term with respect to each Unit, upon written request of Lessor received at least sixty (60) days prior to the end of the Lease Term, Lessee shall permit Lessor to store such Unit, free of charge, except as provided below, at such location on the tracks of Lessee used by Lessee for the storage of surplus rolling stock as shall be reasonably designated by Lessor (taking into account, among other things, Lessee's storage capacity security and access) in its request for storage pursuant to this Article 19 B for a period (the "Storage Period") beginning on the expiration of the Lease Term and ending not more than thirty (30) days after the later of the expiration of the Lease Term with respect to such Units or the date on which 50% of all Units to be returned at the expiration of the Lease Term have been returned. Any storage facilities provided by Lessee pursuant to this Article 19 B shall, in all cases, be at the cost to Lessor of insurance and Lessee's out-of-pocket costs in connection with providing any services not contemplated hereby to be provided during the Storage Period and at the sole risk of Lessor. On not more than

one occasion during the Storage Period with respect to each stored Unit, and upon not less than fifteen (15) days' prior written notice from Lessor to Lessee (which notice shall specify the transportation of all or not less than 30 Units), Lessee will transport such Units, at Lessee's cost and expense, to a destination or interchange point, f.o.b. such destination or interchange point, on Lessee's lines specified by the Lessor whereupon Lessee shall have no further liability or obligation with respect to such Units. During the Storage Period, Lessee will permit Lessor or any person designated by it, to inspect the Units; provided, however, that such inspection shall not interfere with the normal conduct of Lessee's business, such person shall be insured to the reasonable satisfaction of Lessee with respect to any risks incurred in connection with any such inspections and Lessee shall not be liable for any injury to, or the death of, any person exercising, on behalf of Lessor, the rights of inspection granted pursuant hereto. Lessee shall not be required to store the Units after the Storage Period. If Lessee stores any Unit after the Storage Period, such storage shall be at the sole expense and risk of Lessor.

#### **ARTICLE 20: INSPECTION**

Lessor shall, at its sole cost and expense, at any reasonable time during normal business hours and without interfering with Lessee's operations, have the right to enter the premises of Lessee for the purpose of inspecting the Units to ensure Lessee's compliance with its obligations hereunder. Lessor shall enter and occupy Lessee's property at Lessor's sole risk and shall be subject at all times to Lessee's operating and safety requirements. Any injury, death or property damage arising out of such entry, occupancy and inspection, even if caused or contributed to by Lessee's negligence, gross or otherwise, shall be the entire responsibility of Lessor, and Lessor will indemnify and hold harmless Lessee from any and all such liabilities. Lessor will obtain permission from a local Lessee operations officer 48 hours before entry and such permission shall be granted subject to the above.

#### **ARTICLE 21: DISCLAIMER**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER RELATING TO THE UNITS. LESSEE CONFIRMS THAT IT HAS SELECTED THE UNITS ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR OTHER THAN THOSE INCLUDED HEREIN, AND LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OR VENDOR OF ANY OF THE UNITS.

#### **ARTICLE 22: REPRESENTATIONS AND WARRANTIES**

Lessee represents and warrants that (a) Lessee is a duly organized, validly existing corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; (b) Lessee has full corporate power, authority and legal right to execute, deliver and perform this Agreement, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee; and (c) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against Lessee which involves the Units or the transactions contemplated by this Agreement.

### ARTICLE 23: DEFAULT

A. The occurrence of any of the following events shall be an Event of Default by Lessee:

- (i) The nonpayment by Lessee of any sum required herein to be paid to Lessor by Lessee and such nonpayment shall continue for ten (10) business days after Lessee's receipt of written notice from Lessor; or
- (ii) Lessee shall fail to maintain the insurance required by Article 16; or
- (iii) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or for the major part of its property; or
- (iv) Any representation or warranty made by Lessee herein is untrue or incorrect in any material respect as of the date of issuance or making thereof and such untruth or incorrectness shall continue to be material and unremedied for a period of thirty (30) days after receipt by Lessee of written notice thereof from Lessor; provided that, if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute an Event of Default hereunder so long as (i) Lessee is diligently proceeding to remedy such incorrectness, (ii) such default cannot be cured within thirty (30) days, and (iii) such default does not impair in any material respect the Lessor's interest in the Units; or
- (v) Lessee shall fail to observe or perform any other of the covenants or agreements to be observed or performed by Lessee hereunder and such failure shall continue unremedied for thirty (30) days after written notice from Lessor to Lessee, specifying the failure and demanding the same to be remedied; provided that, if such failure is capable of being remedied, no such failure shall constitute an Event of Default hereunder for a period of ninety (90) days after receipt of such notice, so long as (i) Lessee is diligently proceeding to remedy such failure, (ii) such default cannot be cured within thirty (30) days, and (iii) such default does not impair in any material respect the Lessor's interest in the Units.

B. Upon the occurrence of an Event of Default, Lessor may:

- (i) Proceed by any lawful means to terminate this Agreement and recover damages for a breach hereof. Lessor shall use reasonable efforts to mitigate such damages; or
- (ii) Terminate Lessee's right to possession and use of the Units, whereupon all rights and interest of Lessee in the Units shall terminate and thereupon Lessor may enter upon any premises where the Units may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of

Lessee, and Lessor shall nevertheless have the right to recover from Lessee any rent and other amounts which are then due and payable; or

- (iii) Proceed by any lawful means to enforce performance by Lessee of this Agreement.

Lessee shall bear the costs and expenses, including without limitation reasonable attorney fees, incurred by Lessor in connection with the exercise of its remedies pursuant to this Article 22 B. No remedy referred to in this Article 22 B is intended to be exclusive but each shall be cumulative and in addition to any other remedy otherwise available to Lessor at law or in equity.

#### **ARTICLE 24: PURCHASE AND RENEWAL OPTIONS**

Provided that no Event of Default, or any event which with lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, BNLC shall have the right at the expiration of the Lease Term of any Rider to purchase any or all of the Units as specified in such Rider, or Lessee shall have the right at the expiration of the Lease Term of any Rider to renew and extend this Agreement for any or all Units as specified in such Rider. The renewal term with respect to the Units shall be subject to all the terms of this Agreement including those contained in the applicable Rider. BNLC or Lessee, as the case may be, shall give Lessor written notice not less than ninety (90) days prior to the end of the Lease Term of any Rider of its election to exercise either the purchase option, in the case of BNLC, or the renewal option, in the case of Lessee, provided for in such Rider.

#### **ARTICLE 25: RECORDS**

Lessee will perform all record keeping functions related to the use of the Units by Lessee and other railroads that Lessee, in the normal course of business, from time to time, performs for similar equipment owned or leased by Lessee. Lessee agrees to make such information available to Lessor from time to time as Lessor may reasonably request.

#### **ARTICLE 26: GOVERNING LAWS**

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York. This Agreement, together with any Rider(s) attached hereto, contains all of the terms and conditions agreed to between the parties, and no other prior agreements, oral or otherwise, concerning the subject matter of this Agreement, shall be deemed to exist or bind either party hereto. The terms of this Agreement and the rights and obligations of the parties may be changed only by writing executed by both parties.

#### **ARTICLE 27: SEVERABILITY**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**ARTICLE 28: FURTHER ASSURANCES; FINANCIAL INFORMATION**

A. Lessee will promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions.

B. Lessee will furnish to Lessor not later than 120 days after the end of each fiscal year of Lessee, Lessee's Form 10-K report to the Securities and Exchange Commission.

RECORD  
"B"

**ARTICLE 29: NOTICES**

Any notices required or made hereunder in writing shall be provided by certified mail, return receipt requested, to:

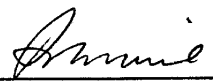
To Lessor: First Union Commercial Corporation  
One First Union Center  
301 South College Street, 20th Floor  
Charlotte, North Carolina 28202  
Attention: Contract Administrator

To Lessee: Burlington Northern Railroad Company  
3200 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102  
Attention: Treasurer

To BNLC: BN Leasing Corporation  
3200 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102  
Attention: Treasurer

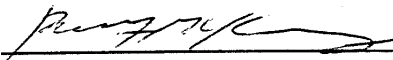
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 1st day of March, 1994.

**FIRST UNION COMMERCIAL CORPORATION**

By 

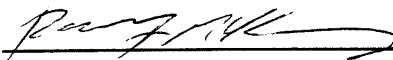
Title Senior Vice President

**BURLINGTON NORTHERN RAILROAD  
COMPANY**

By 

Title: Senior Vice President & Treasurer

**BN LEASING CORPORATION**

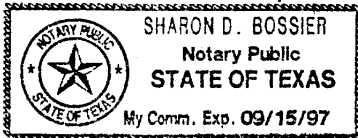
By 

Title: Vice President & Treasurer



STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF TARRANT            )

On this 1st day of March, 1994, before me personally appeared Robert F. McKenney, to me personally known, who being duly sworn, did depose and say that such person is Senior Vice President & Treasurer of Burlington Northern Railroad Company and that the foregoing Master Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



[seal]

Sharon D. Bossier  
Notary Public

STATE OF NORTH CAROLINA       )  
  ) ss.  
COUNTY OF MECKLENBURG        )

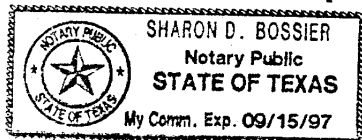
On this 4th day of March, 1994, before me personally appeared Paul W. Van Wie, to me personally known, who being duly sworn, did depose and say that such person is Senior Vice President of First Union Commercial Corporation and that the foregoing Master Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

[seal]

Cheryl D. Johnson  
Notary Public

STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF TARRANT            )

On this 1st day of March, 1994, before me personally appeared Robert F. McKenney, to me personally known, who being duly sworn, did depose and say that such person is Vice President & Treasurer of BN Leasing Corporation and that the foregoing Master Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



[seal]

Sharon D. Bossier  
Notary Public

**CERTIFICATE OF ACCEPTANCE**

I, the duly authorized representative for Burlington Northern Railroad Company (Lessee), do hereby certify that I have inspected each of the Units of equipment identified below and I have accepted delivery of each such Unit on the date and at the place set forth below, and hereby waive the right to reject such Unit pursuant to Article 3 of the Agreement.

**Number of Units:**

**Description of Units:**

**Unit Numbers:**

**Delivered at:**

The equipment is subject to all the terms and conditions of the Master Lease Agreement between \_\_\_\_\_, Lessor, and Burlington Northern Railroad Company, Lessee, dated \_\_\_\_\_, 1994 and Rider \_\_\_\_.

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Authorized Representative of Lessee**


### **RIDER ONE (1) TO LEASE AGREEMENT**

Effective this 4th day of March, 1994, this Rider shall become a part of the Master Lease Agreement between **First Union Commercial Corporation**, Lessor, **Burlington Northern Railroad Company**, Lessee, and **BN Leasing Corporation**, dated March 1, 1994 (the "Agreement"). The Units described herein shall be leased to Lessee, subject to the terms and conditions in said Agreement and this Rider as shown below:

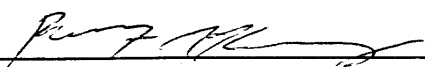
- |                               |  |
|-------------------------------|--|
| I. NUMBER OF UNITS:           | Ten (10).  |
| II. DESCRIPTION OF UNITS:     | All-Purpose Husky-Stack Single Unit Double Stack Container/Trailer Car with 70-Ton Trucks.   |
| III. LEASE TERM:              | Lease term commences on March 4, 1994, and terminates on March 1, 1999.  |
| IV. RENTAL RATE:              | \$490.00 per Unit per month.   |
| V. PAYMENT DATES:             | 1st of each month, commencing on April 1, 1994.  |
| VI. PURCHASE OPTIONS:         | Subject to Article 24 hereof, BNLC may purchase any or all of the Units remaining at the end of the Lease Term for their Fair Market Sales Value, as determined in accordance with Schedule A attached hereto.   |
| VII. RENEWAL OPTIONS:         | Subject to Article 24 hereof, Lessee may extend the term of this Agreement in respect of any or all of the Units remaining at the end of the Lease Term for a period of up to sixty (60) months at Fair Market Rental Value as determined in accordance with Schedule A attached hereto, not to exceed the monthly rental rate of the original Lease Term. |
| VIII. DELIVERY DATE:          | March 4, 1994  |
| IX. PLACE OF DELIVERY:        | In Lessee Service.   |
| X. UNIT INITIALS AND NUMBERS: | BN 61000 through BN 61009.   |
| XI. ADDITIONAL PROVISIONS:    | None.  |

IN WITNESS WHEREOF, the parties have executed this Rider as of the 4th day of March, 1994.

**FIRST UNION COMMERCIAL  
CORPORATION**

By   
Title Senior Vice President

**BURLINGTON NORTHERN RAILROAD  
COMPANY**

By   
Title: Senior Vice President & Treasurer

**BN LEASING CORPORATION**

By   
Title: Vice President & Treasurer

CASUALTY LOSS VALUE SCHEDULE  
TO RIDER #1 OF LEASE AGREEMENT DATED MARCH 1, 1994  
BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY, AS LESSEE  
AND FIRST UNION COMMERCIAL CORPORATION, AS LESSOR

RENTAL NUMBER	RENTAL DATE	CASUALTY LOSS PERCENT	RENTAL NUMBER	RENTAL DATE	CASUALTY LOSS PERCENT
1	Mar-94	102.1389%	31	Sep-96	89.0783%
2	Apr-94	101.7721%	32	Oct-96	88.5646%
3	May-94	101.4022%	33	Nov-96	88.0472%
4	Jun-94	101.0265%	34	Dec-96	87.5228%
5	Jul-94	100.6476%	35	Jan-97	86.9947%
6	Aug-94	100.2655%	36	Feb-97	86.4627%
7	Sep-94	99.8776%	37	Mar-97	85.9270%
8	Oct-94	99.4864%	38	Apr-97	85.3868%
9	Nov-94	99.0920%	39	May-97	84.8427%
10	Dec-94	98.6918%	40	Jun-97	84.2941%
11	Jan-95	98.2883%	41	Jul-97	83.7416%
12	Feb-95	97.8814%	42	Aug-97	83.1853%
13	Mar-95	97.4712%	43	Aug-97	82.6244%
14	Apr-95	97.0510%	44	Sep-97	82.0595%
15	May-95	96.6274%	45	Nov-97	81.4908%
16	Jun-95	96.1938%	46	Dec-97	80.9174%
17	Jul-95	95.7567%	47	Jan-98	80.3401%
18	Aug-95	95.3162%	48	Feb-98	79.7587%
19	Sep-95	94.8655%	49	Mar-98	79.1735%
20	Oct-95	94.4114%	50	Apr-98	78.5853%
21	Nov-95	93.9538%	51	May-98	77.9931%
22	Dec-95	93.4859%	52	Jun-98	77.3979%
23	Jan-96	93.0145%	53	Jul-98	76.7987%
24	Feb-96	92.5396%	54	Aug-98	76.1955%
25	Mar-96	92.0610%	55	Sep-98	75.5893%
26	Apr-96	91.5757%	56	Oct-98	74.9790%
27	May-96	91.0867%	57	Nov-98	74.3646%
28	Jun-96	90.5909%	58	Dec-98	73.7472%
29	Jul-96	90.0915%	59	Jan-99	73.1256%
30	Aug-96	89.5884%	60	Feb-99	72.5000%

THESE PERCENTAGES REFLECT RECEIPT OF RENT FOR THE APPLICABLE PERIOD

## **SCHEDULE A TO RIDER 1**

### **DETERMINATION OF "FAIR MARKET RENTAL VALUE" OR "FAIR MARKET SALES VALUE"**

"Fair Market Rental Value" or "Fair Market Sales Value" with respect to any Unit of Equipment shall mean the cash rent or cash price obtainable for such Unit in an arm's length lease or sale between an informed and willing lessee or purchaser under no compulsion to lease or purchase, as the case may be, and an informed and willing lessor or seller, under no compulsion to lease or sell, as the case may be, as the same shall be specified by agreement between Lessor and Lessee (or BNLC, in the case of the exercise of a purchase option). Lessee, upon delivering to Lessor its revocable notice of exercise of its option to renew the Lease with respect to any Unit, and BNLC, upon delivering to Lessor its revocable notice of its exercise of its option to purchase any Unit, shall in such notice set forth a rental value or purchase price for such Unit or Units, as the case may be. If the parties are unable to agree upon a Fair Market Rental Value and/or a Fair Market Sales Value within 30 days after delivery of the aforementioned notice by Lessor or BNLC, as the case may be, the purchase price of such Unit or Units shall be determined by appraisal. Lessee or BNLC, as the case may be, will within 15 days after such 30-day period provide Lessor the name of an appraiser that would be satisfactory to Lessee or BNLC, as the case may be, and Lessor and Lessee or BNLC, as the case may be, will consult with the intent of selecting a mutually acceptable appraiser. If a mutually acceptable appraiser is selected, the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, shall be determined by such appraiser and Lessor and Lessee or BNLC, as the case may be, shall each bear one-half of the cost thereof. If Lessee or BNLC, as the case may be, and Lessor are unable to agree upon a single appraiser within such 15-day period, Lessor will retain an appraiser within 15 days. The appraiser selected by Lessee or BNLC, as the case may be, and the appraiser selected by Lessor shall select a consensus appraiser within 30 days. If the appraisers cannot agree on a consensus appraiser within 30 days, the Fair Market Rental Value, and/or Fair Market Sales Value shall be determined by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association and the cost of such determination shall be borne equally by Lessee or BNLC, as the case may be, and Lessor, except that Lessee or BNLC, as the case may be, shall bear the cost of the appraiser selected by Lessee or BNLC, as the case may be, and Lessor shall bear the cost of the appraiser selected by Lessor. If the parties are able to agree upon a single appraiser or the two appraisers are able to agree upon a consensus appraiser, the single appraiser or the three appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Rental Value and/or Fair Market Sales Value. If there shall be a panel of three appraisers, the appraisal which differs most from the other two appraisals with respect to Fair Market Rental Value and Fair Market Sales Value, each considered separately, shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute the Fair Market Rental Value or Fair Market Sales Value, as appropriate. If there shall be a panel of three appraisers, Lessee or BNLC, as the case may be, shall bear the cost of the appraiser selected by Lessee or BNLC, Lessor shall bear the cost of the appraiser selected by Lessor, and Lessee or BNLC, as the case may be, and Lessor shall equally share the cost of the consensus appraiser. If Lessee revokes its notice to renew the Lease or BNLC revokes its notice to purchase any Unit, Lessee or BNLC, as the case may be, will pay the cost of the appraisal.